POLICE DEPARTMENT CITY OF NEW YORK

February 3, 2016

MEMORANDUM for: Police Commissioner

Re: Police Officer Christopher Read
Tax Registry No. 946146
73 Precinct
Disciplinary Case No. 2014-11821

Police Officer Kevin Seidita
Tax Registry No. 943803
73 Precinct
Disciplinary Case No. 2014-11822

Charges and Specifications:

Disciplinary Case No. 2014-11821

1. Said Police Officer Christopher Read, on or about October 1, 2013, while assigned to the 73rd Precinct, while on-duty, having responded to a call of a "Past Larceny" at or about [redacted] Kings County, and having interviewed an individual, known to the Department, who reported having his credit card and other items stolen from his vehicle, wrongfully did fail and neglect to make accurate entries in Department records, in that said Police Officer wrongfully prepared or caused to be prepared documents classifying the complaint as one of "lost property."

   P.G. 203-05, Page 1, Paragraph 4 – PERFORMANCE ON DUTY – GENERAL
   GENERAL REGULATIONS

Disciplinary Case No. 2014-11822

1. Said Police Officer Kevin Seidita, on or about October 1, 2013, while assigned to the 73rd Precinct, while on-duty, having responded to a call of a "Past Larceny" at or about [redacted] Kings County, and having interviewed an individual, known to the Department, who reported having his credit card and other items stolen from his vehicle, wrongfully did fail and neglect to make accurate entries in Department records, in that said Police Officer wrongfully prepared or caused to be prepared documents classifying the complaint as one of "lost property."

   P.G. 203-05, Page 1, Paragraph 4 – PERFORMANCE ON DUTY – GENERAL
   GENERAL REGULATIONS

2. Said Police Officer Kevin Seidita, on or about October 1, 2013, while assigned to the 73rd Precinct, while on-duty, having responded to a call of a "Past Larceny" at or about [redacted], Kings County, and having interviewed an individual, known to the Department, who reported having his credit card and other items stolen from his vehicle, inappropriately filled out a Complainant's Report of Lost or Stolen Property instead of having the complainant do it.

P.G. 207-12, Page 1, Paragraph 3 and Note – LOST OR STOLEN PROPERTY/IDENTITY THEFT

Appearances:
For the Department: Samuel Yee, Esq., Department Advocate's Office
For Respondents: Craig R. Hayes, Esq., Worth, Longworth & London LLP

Dates of Hearing(s) :
April 24 and October 21, 2015

Decision:
Guilty

Trial Commissioner:
ADCT David S. Weisel

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before the tribunal on April 24 and October 21, 2015. Respondents, through their counsel, entered a plea of Not Guilty to the subject charges. The Department called John Akintomiwa and Sergeant James Blondo as witnesses. Respondents testified on their own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, the Court finds Respondents Guilty.

FINDINGS AND ANALYSIS

Respondents are charged with wrongfully downgrading a larceny complaint to one of lost property. Respondent Seidita, who filled out the paperwork on the complaint, is also charged

with wrongfully filling out the Complainant's Report of Lost or Stolen Property instead of having the complainant do it himself.

John Akintowima testified that on September 30, 2013, while driving his sister's car, he parked on [redacted] in Brooklyn, within the confines of the 73 Precinct, to visit his brother and sister-in-law. After about three hours, he came back out to find that the door to the vehicle was open. He saw that the door had been opened so forcefully it could not be closed. The lock was not actually broken, however. There were scratches indicating that a screwdriver was used, as well as a dent. The glove compartment was ajar, and all of his documents and compact discs were "exposed." His bag, which contained documents like his wallet, driver's license and bank card, was missing (Tr. 6-8, 12-15, 40-42, 48).

Akintomiwa's family called 911 for him, several times in fact, as it took the police about an hour to arrive (Tr. 16, 54-56; Dept. Ex. 2a-c, 911 call & dispatch records beginning Sept. 30, 2013, at 2330 hours until Oct. 1, 2003, at 0551 hours, all except the last with a disposition of "unfounded"). When the police arrived, Akintomiwa showed them the car and said that someone opened his door, took his bag, and damaged other items. He "insisted" that his bag had been taken. The most important things that were taken were his wallet, which contained, inter alia, his driver's license and debit or credit card. Akintomiwa did not tell the officers that he lost anything. When the officers asked Akintomiwa whether he was sure he did not lose his wallet before entering his brother's house, he replied that he was sure because he never carried his wallet in his pocket and always kept it in that bag (Tr. 42-44, 49, 80).

Department Exhibit 1 was the Complainant's Report of Lost or Stolen Property. It listed a credit card and a New York State driver's license as "lost" property. Akintomiwa testified that he did not fill it out; he only signed it at the bottom (Tr. 44-45).

Sergeant James Blondo of the Quality Assurance Division testified that this matter was revealed as a result of the routine semi-annual audit of the 73 Precinct. Blondo confirmed that Respondents responded to Akintomiwa's 911 calls, in which the complainant stated his wallet was stolen from the car. Respondent Seidita filled out the scratch and computer copies of the complaint report and classified the report as lost property. The incident was finalized as 10-93C, complaint report taken. Respondents' activity logs indicated that they responded to a call of a past larceny and finalized the incident as complaint report taken (Tr. 52-54, 56-60, 81-82).

Akintomiwa testified that he told Blondo he saw the damage to the vehicle. It looked as though a screwdriver had been placed in the car door. When Blondo suggested that it had not seemed like the window glass was broken, Akintomiwa responded that something could have been used to pry open the door. Blondo testified that Akintomiwa told him the lock was broken during the theft (Tr. 47-48, 70, 73-74).

Blondo testified that the classification as lost property was improper. Akintomiwa told Respondents that his property was stolen. Moreover, a stolen credit card constitutes grand larceny, a felony (see Penal Law § 155.30 [4], Grand Larceny in the Fourth Degree) (Tr. 61-62, 69-70, 81).

Blondo testified that a complainant's statements were only one part of QAD's investigation. The 911 calls and police reports also were key. Blondo conceded that he did not speak to Akintomiwa face-to-face, and therefore could not evaluate his mannerisms while answering. He did not ask Akintomiwa if he filed an insurance claim, but the complainant said that he did not have the car fixed (Tr. 64-68, 72-73, 75, 82-83).

In Blondo's opinion, according to Patrol Guide § 207-12 (3), the complainant is supposed to fill out the Complainant's Report of Lost or Stolen Property himself unless physically unable

to do so, there is a language barrier, or the complainant does not understand. The procedure does say, however, that the officer is to "[i]nstruct and assist" the complainant in filling out the report (Tr. 83-86, 89-90).

Respondents testified consistently in all material respects. They were assigned to the 73 Precinct and responded to the call for a past larceny. Respondent Read believed that he was the operator and Respondent Seidita the recorder. Respondent Seidita admitted that Akintomiwa said his car was broken into and his wallet was missing. But when Respondent Seidita examined the car, it looked "[f]ine" and there was no damage. In his experience, "usually" during car break-ins there was "always" damage or other evidence of a crime, although it was possible there would be no evidence. Respondent Read testified that all the doors were closed and locked. Respondent Read asked Akintomiwa whether it was possible that he simply lost the wallet, dropping it while walking from the vehicle. Akintomiwa agreed that it was possible (Tr. 92-96, 98-103, 105, 113-19).

As Respondents took a complaint report for Akintomiwa and classified the matter as lost property, Respodnent Seidita filled out the Lost or Stolen Property report, based on what the complainant said was missing. He showed and explained it to Akintomiwa and the complainant signed it. Respondent Seidita filled it out himself because, due to the language barrier, Akintomiwa did not seem to understand his explanation of what the form was for and where it would be sent. Respondent Seidita insisted, however, that he could understand Akintomiwa enough to comprehend what he was complaining about. In fact, Respondent Seidita agreed at his official Department interview that he could "clearly converse" with Akintomiwa. Respondent Read agreed with this assessment. Respondent Seidita asserted that the complainant observed him check off the "lost" boxes on the report, and then signed it. Respondent Seidita noted that

the Patrol Guide allowed him to assist a complainant in filling out the report (Tr. 96-100, 102-03, 107-11, 117).

The first issue to be determined in this case is whether Respondents wrongfully classified the complaint as lost property, instead of what the complainant said it was, grand larceny. The tribunal finds that the Department proved by a preponderance of the credible evidence that Respondents wrongfully made this classification.

Resolution of this matter rests only in minor part on a determination of witness credibility. It was undisputed that Akintomiwa told Respondents that his vehicle was broken into and that property had been taken from it. Contrary to Respondents' contention (Tr. 122, 127), there is no requirement that a complainant's account be corroborated by, for example, evidence of damage to the vehicle. As Respondents admitted, items can be stolen from a car without evidence of damage. The fact that Akintomiwa said there was visible damage and Respondents said there was not therefore is not dispositive. If anything, Akintomiwa could have seen something minute on the door that Respondents, not being familiar with the vehicle, simply did not notice. Akintomiwa, as the driver of the vehicle and an auto mechanic by trade doing body and fender work (Tr. 6, 40), was in a better position to make the assessment.

The one area where there was a material issue of credibility was whether, upon prompting by Respondent Read, Akintomiwa said that he might have dropped his wallet on the way from the car to his brother's house. Respondents said that the complainant admitted this possibility, but Akintomiwa denied saying this.

In assessing credibility, the tribunal may consider such factors as consistency of testimony, motivation or bias, and the degree to which an account comports with common sense and human experience.

The tribunal credits Akintomiwa's testimony. First, it is undisputed that Akintomiwa's family, apparently his sister-in-law, told the 911 operator the vehicle was broken into and that property was taken. She only could have known this if Akintomiwa told her. Respondents conceded that they received the radio run as a 10-22, past larceny. Although the true facts may always be different when officers arrive, it strains credulity that Akintomiwa would then deny this key detail when he spoke to the responding officers, for whom he had been waiting hours.

Second, having observed Akintomiwa's demeanor at trial, the Court found him to be a genuine and truthful witness. He first appeared in the courtroom in April 2015. When told that the trial could not continue and he would have to come back when a Yoruba interpreter was available because the participants in the trial could not understand his accent, he dutifully returned in October to complete his testimony. It is difficult to believe that someone who so consistenly gave an account of his vehicle being broken into and important items stolen would have blithely agreed with Respondent Read's suggestion that he inexplicably might have dropped the wallet on the way from the car to the house.

Finally, and perhaps most significantly, Akintomiwa lacked any motive to fabricate. He had nothing to gain from coming before this tribunal several times and reliving an upsetting experience where he was victimized. There was no evidence that he sought to take any kind of legal action or institute any sort of complaint against Respondents. He simply answered questions when contacted by the Quality Assurance Division after the audit. The record provided no credible explanation as to why Akintomiwa would come before this tribunal more than two years after the incident and lie about what he told Respondents on the day in question.

The Court rejects counsel's argument that Respondents had no motive to downgrade this case from grand larceny to lost property (Tr. 122). Grand larceny is an index, or "seven

major," crime, see Patrol Guide § 207-01 (13)(f). They effectively worsen a command's crime statistics, for which supervisors are held responsible. It is a reasonable conclusion that line officers would want to please their supervisors by effectively reducing the amount of index crimes.

As the officer, apparently the recorder at that time, who filled out the complaint report, Respondent Seidita was responsible for the errant classification. Here, however, Respondent Read also was responsible, as the record reflects that he helped cause the misclassification by collusion, intentional actions or negligence. See *Case No. 2012-8139*, p. 3 (Mar. 27. 2015). Respondent Read examined the vehicle and its surroundings for "proof" that it was broken into, something that he was not supposed to do in the first place. Moreover, it was Respondent Read that asked Akintomiwa whether it was possible he dropped the wallet accidentally. This suggestion was a method of attempting to make the larceny into a lost property case. Under the circumstances, therefore, Respondent Read helped make the misclassification and is responsible for it as well. Cf. *-8139*, pp. 3-6 (accused officer had no role and was not asked for input on his partner's completion of complaint report and classification of the incident; determination of whether operator is responsible for recorder's action is to be made on case-by-case basis). Therefore both Respondents are found Guilty of the first specification against each of them.

The second issue is whether or not Respondent Seidita wrongfully filled out the Complainant's Report of Lost or Stolen Property himself instead of having Akintomiwa do it. The Court finds that the Department proved that Respondent Seidita did this wrongfully.

Patrol Guide § 207-12 (3) states that responding officers are to "[i]nstruct and assist complainant" in filling out the Lost or Stolen Property report. The fair import of this procedure

is that the complainant is to fill it out unless unable to do so, and the officers are to help if necessary.

Respondent Seidita asserted that he filled the report out himself because there was a language barrier, and Akintomiwa did not seem to understand his explanation of what the form was for and where it would be sent. The trial, however, revealed that the only language problem was that the Court, the court reporter, Respondents' counsel and Respondents could not understand Akintomiwa speaking English in his African accent (Tr. 10-12, 18-22, 25). There was no evidence that Akintomiwa could not understand officers or anyone else speaking in English. Certainly there was no evidence that suggested he would be unable to understand that he was filling out police paperwork and listing what was missing. Therefore Respondent Seidita should have had Akintomiwa fill it out himself, as that ensured the most accurate account. The tribunal declines to extend the meaning of "assist" in the Patrol Guide procedure to mean "do it myself because it's easier." As such, Respondent Seidita is found Guilty of the second specification.

PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondents' service records were examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222 (1974). Respondent Read was appointed to the Department on January 7, 2008, and Respondent Seidita on January 10, 2007. Information from their personnel records that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department requested a penalty of 15 vacation days for each Respondent (Tr. 131). The Court sees no reason, however, not to impose the more recent precedential penalty of 10 days. See *Case Nos. 2013-9076 & -9077* (July 24, 2015) (nine- and fourteen-year police officers, with no prior disciplinary records, received penalty of 10 vacation days each for

misclassifying robbery involving a firearm as petit larceny, and failing to refer the report to the precinct detective squad for further investigation); *Case No. 2013-10948* (Dec. 12, 2014) (22-year police officer with no record received 10 vacation days for misclassifying complaint report as lost property instead of grand larceny). Therefore, the Court recommends that each Respondent receive a penalty of 10 vacation days.

Respectfully submitted,

David S. Weisel
Assistant Deputy Commissioner Trials

APPROVED

MAY 27 2016

WILLIAM J. BRATTON
POLICE COMMISSIONER

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER KEVIN SEIDITA
TAX REGISTRY NO. 943803
DISCIPLINARY CASE NO. 2014-11822

On his last three annual performance evaluations Respondent Seidita once received an overall rating of 3.5 "Highly Competent/Competent" and twice received an overall rating of 4.0 "Highly Competent." [redacted] He has received one medal for Excellent Police Duty and has no formal disciplinary history.

For your consideration.

David S. Weisel
Assistant Deputy Commissioner Trials

POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER CHRISTOPHER READ
TAX REGISTRY NO. 946146
DISCIPLINARY CASE NO. 2014-11821

On his last three annual performance evaluations Respondent Read twice received an overall rating of 3.0 "Competent" and once received an overall rating of 3.5 "Highly Competent/Competent." [redacted]

In 2010, Respondent was placed on Level 1 Performance Monitoring for having three or more CCRB complaints in one year. He has no other prior formal disciplinary history.

For your consideration.

David S. Weisel
Assistant Deputy Commissioner Trials